

## Union Calendar No. 370

105<sup>TH</sup> CONGRESS  
2D SESSION

# H. R. 2592

[Report No. 105-663]

To amend title 11 of the United States Code to provide private trustees the right to seek judicial review of United States trustee actions related to trustee expenses and trustee removal.

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### IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1997

Mr. GOODLATTE (for himself, Mr. SMITH of Texas, and Mr. BARR of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 31, 1998

Additional sponsors: Mr. PARKER, Mr. NETHERCUTT, Mr. PICKERING, and Mr. WICKER

JULY 31, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

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1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Private Trustee Re-  
 5       form Act of 1997”.

6       **SEC. 2. PRIVATE TRUSTEES.**

7       (a) **COMPENSATION OF OFFICERS.**—Section 330 of  
 8       title 11, United States Code, is amended by adding at the  
 9       end the following:

10       “(e) Upon the motion of a trustee appointed under  
 11       section 586(b) of title 28, and after an opportunity for  
 12       an administrative hearing on the record, the court shall  
 13       have the authority, notwithstanding section 326(b) of this  
 14       title, to determine the actual, necessary expenses of such  
 15       trustee. In determining actual, necessary expenses, the  
 16       court shall consider all relevant factors, including—

17               “(1) whether the expense will benefit the ad-  
 18       ministration of cases by the trustee; and

19               “(2) whether the expense is reasonable, based  
 20       upon the customary and usual expenses incurred by  
 21       fiduciaries providing services of comparable nature  
 22       in matters other than cases under this title.”.

23       (b) **REMOVAL OF TRUSTEE OR EXAMINER.**—Section  
 24       324 of title 11, United States Code, is amended by adding  
 25       at the end the following:

1       “(c)(1) Notwithstanding any provision of section 586  
 2 of title 28, in the event the United States trustee decides  
 3 to cease assigning cases to a trustee appointed under sec-  
 4 tion 586(a) or (b) of title 28, the trustee, after an oppor-  
 5 tunity for an administrative hearing on the record, may  
 6 seek judicial review of such decision. Upon review, the  
 7 court may reverse the decision only if the United States  
 8 trustee has acted unreasonably or without cause. The fail-  
 9 ure of the United States trustee to make a final adminis-  
 10 trative disposition of a trustee’s request to reconsider the  
 11 decision to cease assigning cases within thirty days of such  
 12 request shall be deemed an exhaustion of all administra-  
 13 tive remedies for purposes of this subsection.

14       “(2) Notwithstanding any other provision of law, and  
 15 pending the exhaustion of available administrative rem-  
 16 edies or a judicial determination on the merits, the court  
 17 may order injunctive relief in favor of the trustee.”.

18 **SECTION 1. SUSPENSION AND TERMINATION OF PANEL**  
 19 **TRUSTEES AND STANDING TRUSTEES.**

20       *Section 586(d) of title 28, United States Code, is*  
 21 *amended—*

22               *(1) by inserting “(1)” after “(d)”, and*

23               *(2) by adding at the end the following:*

24               “(2) *A trustee whose appointment to the panel or as*  
 25 *a standing trustee is terminated or who ceases to be as-*

1 signed to cases filed under title 11 may obtain judicial re-  
 2 view of the final agency decision by commencing an action  
 3 in the United States district court for the district in which  
 4 the panel member or standing trustee resides, after first ex-  
 5 hausting all available administrative remedies, which if the  
 6 trustee so elects, shall also include an administrative hear-  
 7 ing on the record. Unless the trustee elects to have an ad-  
 8 ministrative hearing on the record, the trustee shall be  
 9 deemed to have exhausted all administrative remedies for  
 10 purposes of this section if the agency fails to make a final  
 11 agency decision within 90 days after the trustee requests  
 12 administrative remedies. The Attorney General shall pre-  
 13 scribe procedures to implement this paragraph.”.

14 **SEC. 2. EXPENSES OF STANDING TRUSTEES.**

15 Section 586(e) of title 28, United States Code, is  
 16 amended by adding at the end the following:

17 “(3) After first exhausting all available administrative  
 18 remedies, an individual appointed under subsection (b) of  
 19 this section may obtain judicial review of final agency ac-  
 20 tion to deny a claim of actual, necessary expenses under  
 21 this paragraph by commencing an action in the United  
 22 States district court in the district where the individual re-  
 23 sides.

24 “(4) The Attorney General shall prescribe procedures  
 25 to implement this subsection.”.

1 **SEC. 3. PROCEDURES FOR AND STANDARD OF REVIEW.**

2 *Section 157 of title 28, United States Code, is amend-*  
3 *ed—*

4 *(1) by redesignating subsections (d) and (e) as*  
5 *subsections (e) and (f), respectively, and*

6 *(2) by inserting after subsection (c) the follow-*  
7 *ing:*

8 *“(d) In conducting judicial review under section*  
9 *586(d)(2) or section 586(e)(3) of this title, the district court*  
10 *shall determine whether to retain the case or to refer the*  
11 *case to a bankruptcy judge or magistrate judge in the dis-*  
12 *trict: Provided, however, That in any district where fewer*  
13 *than 3 bankruptcy judges have been appointed under sec-*  
14 *tion 152(a) of this title, a referral shall only be made to*  
15 *a United States magistrate judge in the district. Any bank-*  
16 *ruptcy judge or magistrate judge to whom a case is referred*  
17 *shall submit a recommendation for disposition to the dis-*  
18 *trict court based solely on a review of the administrative*  
19 *record before the agency, and a final order or judgment*  
20 *shall be entered by the district court after considering the*  
21 *bankruptcy judge’s or magistrate judge’s recommendation,*  
22 *and after reviewing those matters to which any party has*  
23 *timely and specifically objected. The decision of the agency*  
24 *shall be affirmed unless it is unreasonable and without*  
25 *cause based upon the administrative record before the agen-*  
26 *cy.”.*



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